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1 THE CLERK: All rise. United States Bankruptcy
2 Court, District of Delaware, the Honorable Raymond T. Lyons
3 presiding.

4 THE COURT: Good morning. Thank you. Please be
5 seated. All right. Counsel, would you enter your
6 appearances please?

7 MR. STEINFELD: Yes, Your Honor. Good morning.
8 Joseph L. Steinfeld, Jr. appearing on behalf of plaintiff,
9 Montgomery Ward and its plan administrator. And with me,
10 I'll let her make her appearance.

11 MS. SCHEIBE: Good morning, Your Honor. Karen
12 Scheibe on behalf of plaintiff, Montgomery Ward.

13 THE COURT: Good morning.

14 MR. SCHACHTER: Good morning, Your Honor. Kenneth
15 Schachter, Silverberg, Stonehill, Goldsmith & Haber, P.C.
16 for the defendant the OTC.

17 MR. KAPLAN: And good morning, Your Honor.
18 Mitchell Kaplan for defendant, OTC.

19 THE COURT: All right. Fine. Thank you and good
20 morning. I know I've complimented counsel before in this
21 case but I want to reiterate my compliments for the fine and
22 it appears to be complete preparation that you made in
23 anticipation of this trial and the quality of the product
24 that you've submitted, the trial briefs, et cetera, the
25 organization that you've shown and also the professional

1 courtesies that you've shown to each other to arrive at a
2 very detailed stipulation, a partial stipulation of facts
3 here. So my compliments to you again.

4 In light of the fact that both sides have filed
5 such extensive trial briefs, unless anybody feels a burning
6 desire, I don't see any need for opening statements, but
7 you're welcome to make them if you would like and since
8 we're down to a defense issue where the defense bears the
9 burden of proof, I guess, Mr. Schachter, you should go
10 first.

11 MR. SCHACHTER: Your Honor, we're prepared to
12 proceed directly to testimony.

13 THE COURT: All right. Mr. Steinfeld.

14 MR. STEINFELD: I hate to pass up an opportunity
15 to say one or two words, so I will, but I'll keep it
16 extremely brief because I agree that what we've put forward,
17 both sides have put forward in our briefs do summarize our
18 positions. I just wanted to basically comment on what I
19 anticipate the proceeding is going to be like. I'd like to
20 give the Court a little bit of a road map and then I suppose
21 certainly Mr. Schachter can respond.

22 This is a little bit of an unusual case, if I say
23 so myself, in the fact that we've had a consolidated
24 proceeding where a record was developed, an initial record
25 where there were three basic defendants that joined together

1 and evidence was put on before the Court almost a year ago.
2 And then we subsequently had additional discovery and
3 another trial for one of the jewelry defendants, M.
4 Fabrikant.

5 And as the Court is aware, there were things in
6 that trial that came out that the Court has now ruled are
7 going to be part of this trial, subject to the defendants
8 made objections, the Court overruled them, sustained in some
9 cases on motions in limine. So that's already before the
10 Court and we're not going to spend the time today to
11 obviously rehash that. We assume the Court will read that
12 testimony. The Court probably remembers a lot of the
13 testimony in any respect.

14 But there will be some testimony today from the
15 plaintiff's standpoint further eliciting comments,
16 principally from Randy Brown and interpreting the various
17 documents that were introduced in the Fabrikant trial
18 concerning the issue of morbidity and financial condition of
19 the debtor prior to or at the time of the terms change and
20 continuing during the preference period.

21 And then in effect what we have here is a
22 marathon. I hate to call it that, but it seems like it to
23 me. And while you thought we ran about 13.1 miles of the
24 26.2 miles, I think we're going to have to go back a few
25 miles and then go forward. And I suspect, with the

1 cooperation of both counsel, we'll try to make this as
2 quickly and expeditiously as possible and it should occur.
3 And then it will be up to the Court, of course, to read all
4 of the mountain of material that has been presented and make
5 its final decision.

6 The briefs set forth our argument and again, I
7 don't think I'll repeat it here. I just wanted to lay that
8 predicate of what we anticipated doing. This trial not only
9 will be concerned about the financial condition of Wards,
10 because that's an important aspect of the ordinary course
11 defense, whether it be the objective or the subjective test,
12 but it also will be concerned about interpreting the payment
13 pattern between the parties.

14 And that I think will be a lot of what the Court
15 will hear today and maybe tomorrow, is whether or not there
16 was a substantial or even reasonable deviation in the
17 payment patterns between the parties and the payment
18 practices between the parties and whether or not the
19 critical issues, I'm sure the Court is aware, is whether or
20 not a days past due approach to analyzing how the parties
21 made payments versus an invoice to pay is going to be a
22 critical issue before the Court. And I'm going to reserve
23 basically arguing the case because that's really better for
24 closing argument. I just wanted to lay that out as a
25 predicate.

1 And one other point, though, that I think, a
2 matter of housekeeping that the Court should be aware of, is
3 that during the industry trial there were no stipulations
4 that I'm aware of with regard to issues like solvency,
5 financial condition or anything for the most part. It went
6 in on the theory that there was going to be a determination.
7 At least we went into that first trial under the impression
8 that we were going to discuss whether or not a term of 30
9 days was ordinary in the industry or not.

10 During that trial there were other issues that
11 were touched upon, but at the time that we went into that
12 trial, this defendant, and I suspect he'll correct me if I'm
13 wrong, but I'm pretty sure I'm right, hadn't formulated the
14 pretrial statement with respect to all of the issues,
15 including the 547b issues, b1 through 7 or 8, or whatever
16 they are. And one of the 547b issues, which is, of course,
17 the plaintiff's case, is whether or not the debtor was
18 solvent at the time of the transfers, the insolvency.

19 And it is a rebuttable presumption, but oftentimes
20 there's evidence of solvency that rebuts the presumption and
21 it doesn't need to be a huge amount of evidence. It has to
22 be some reasonable level of evidence, the Courts have found.
23 And we didn't know what or if they were going to provide and
24 we hired our solvency expert. But none of that evidence
25 went before the Court in the first trial.

1 And now that we have the benefit of the Court's
2 ruling in the first trial, we have the stipulations. And
3 one of the stipulations that the defendants have agreed to
4 is that the defendant agrees that Wards was insolvent. Not
5 the rebuttable presumption, they can't rebut it, it's just
6 they stipulated to insolvency. And that I think is an
7 important overlay that the Court should consider when it
8 considers the evidence here, because the terms change that
9 occurred in this case occurred a matter of, I think it's 37
10 days prior to the stipulated insolvency of the defendant.

11 An insolvency, as I'm sure the Court is aware, in
12 the Bankruptcy Code is defined as the -- if you take the
13 liabilities of the company as stated in its financial
14 statements basically and overlay that with the assets of the
15 company, however assets evaluated at fair value, whether or
16 the not the liabilities exceed the assets. Which it is, I
17 would say it will be unrebuttable that that was the case in
18 this case not only during the preference period, but before
19 the preference period.

20 The other issue that I think the Court should
21 think about is that there's no question that every single
22 invoice and payment that was made prior to the preference
23 period was done at the 60 day terms. So even though the
24 terms change occurred 37 days prior to the preference
25 period, the effect of that terms change, unlike some of the

1 other cases where there were certainly earlier terms changes
2 that affected a pre preference period, the effect of the
3 terms change was wholly within the preference period.

4 There isn't a single invoice that the defendant
5 will be able to point to that carried a term of 30 days and
6 was paid on a term of 30 days, an accelerated payment,
7 during the historical period with regard to these standard
8 terms. So that is a factual distinction.

9 THE COURT: I don't follow that. You better
10 explain that to me.

11 MR. STEINFELD: I will. In other words, take your
12 M. Fabrikant case as an example. The Court heard evidence
13 of that. The terms were changed in M. Fabrikant, I believe,
14 in June of 2000 and they were effective therefore in July of
15 2000 for shipments that were in July, August and September
16 of 2000, a three month period prior to the preference
17 period. So the parties had begun to establish, one could
18 argue, although I argued against it, of course, begun to at
19 least establish some base line of dealings under these new
20 stated terms prior to the preference period. I would argue,
21 and I think correctly, --

22 THE COURT: I see what you're saying.

23 MR. STEINFELD: Now do you understand what's I'm
24 saying?

25 THE COURT: That there were no 30 day invoices

1 that were paid prior to the preference period.

2 MR. STEINFELD: Correct.

3 THE COURT: Okay.

4 MR. STEINFELD: And that is unique in this case.

5 And the other thing that the evidence will show that is
6 unique in this case as opposed to the other cases the Court
7 has heard, is that this defendant was paid in full, had no
8 claim in the bankruptcy or chose approximately \$16,000.

9 There's a stipulation as to that. They decided not to file.
10 But when you have approximately \$3 million of transfers or 2
11 plus million of transfers in the preference period and you
12 get it down to a mere 16,000 even before you reconcile,
13 because there could be credits and debits that could be
14 reconciled, effectively they were paid in full.

15 In the Fabrikant case and in other of the cases
16 that we've had, there was an acceleration and there was a
17 preference we argued, but there was at least some payment.
18 You know, they didn't leave the table wholly satisfied.
19 Whereas in this case, this is the only defendant that I have
20 seen in the cases that we have had where, and the evidence
21 will have to show why that occurred, they left the table
22 basically with all the money paid, while the rest of the
23 creditors, of course, \$350 million of claims that we're
24 paying, over \$2 billion of claims filed, were obviously not
25 paid at that point in time. And I think that's significant.

1 And it's also significant, Your Honor will see,
2 that during the preference period in December and also in
3 Thanksgiving time, which is a very high credit time for the
4 jewelry industry, and the evidence is pretty much
5 indisputable about that, these defendants were getting paid
6 down significantly faster on their debt than any of the
7 other creditors and even than the other jewelry vendors they
8 were getting paid down faster. So that by December, I think
9 it's like 10th or so, they virtually were owed no money.
10 And that to me will be, of course, an evidence of
11 abnormality.

12 With that, I'm going to wait for the evidence and
13 present it to the Court, and I appreciate your attention.

14 THE COURT: Thank you. All right. Mr. Schachter,
15 are you ready to call a witness?

16 MR. SCHACHTER: Yes, I am, Your Honor.

17 MS. SCHEIBE: Your Honor, if I might just
18 interrupt for one moment? We have one housekeeping matter
19 that I just wanted to address.

20 THE COURT: Ms. Scheibe.

21 MS. SCHEIBE: Mr. Schachter, I apologize.

22 MR. SCHACHTER: Okay.

23 MS. SCHEIBE: I do appreciate the Court's
24 compliments on being organized. Unfortunately we do have --
25 we're not quite as organized as we thought that we were. We

1 have some supplemental exhibits to add to the Court's copy
2 and the witness's copy. We've already handed it to the
3 defendant. If I might approach the bench, Your Honor?

4 THE COURT: All right.

5 MS. SCHEIBE: This is the witness's copy. I'm not
6 quite sure if you have that binder.

7 THE COURT: Well, why don't you hold that.

8 MS. SCHEIBE: Here's the Court's copy.

9 THE COURT: Okay. Let's see. I have plaintiff's
10 exhibits and defendant's exhibits. I think I only have one
11 copy here, so okay, I'll just keep this.

12 MS. SCHEIBE: That's fine. If I might just direct
13 Your Honor for a moment --

14 THE COURT: Why don't you go back to the
15 microphone so we get your voice picked up.

16 MS. SCHEIBE: Just to direct Your Honor, what
17 we're supplementing or revising, I guess, is plaintiff's
18 exhibit 36. We've changed the exhibit headings at the top
19 of the pages. They're handwritten. It was just a clerical
20 error. So it should just be replaced.

21 THE COURT: All right.

22 MS. SCHEIBE: The information hasn't changed in
23 any manner. Also plaintiff's exhibit 55C, it should be
24 appended to the end of plaintiff's 55A and B. It's just the
25 backup detail for 55. And the last thing that's in there is

1 a defendant's exhibit. It was part of the defendant's
2 expert report. They subsequently revised that and we
3 received that on Monday. So that really should go into the
4 defendant's binder, but I wanted to present that to the
5 Court, as well.

6 THE COURT: All right. Thank you.

7 MS. SCHEIBE: I do notice that the witness's copy
8 for plaintiff is over there. If you don't mind, if I put it
9 over there?

10 THE COURT: That's fine.

11 MS. SCHEIBE: Thank you.

12 THE COURT: Mr. Schachter.

13 MR. SCHACHTER: Thank you, Your Honor. The
14 defense calls Yoran Sheinman.

15 THE COURT: Mr. Sheinman. Good morning. Mr.
16 Sheinman, before you sit down, I'd like to administer the
17 oath to you. There's a Bible to your left, if you would
18 place your left hand and raise your right hand.

19 DEFENSE WITNESS, YORAN SHEINMAN, SWORN

20 THE COURT: All right. Please have a seat. How
21 do you spell your last name?

22 THE WITNESS: Sheinman, S-H-E-I-N-M-A-N.

23 THE COURT: And your first name?

24 THE WITNESS: Y-O-R-A-N, Yoran.

25 THE COURT: Y-O-R-A-N?

1 THE WITNESS: Yes.

2 THE COURT: All right. Thank you. All right.

3 And if you would just keep your voice up, that microphone in
4 front of you will pick up your voice and it's being recorded
5 in the computer over here. Mr. Schachter.

6 DIRECT EXAMINATION BY MR. SCHACHTER:

7 Q Yes. Mr. Sheinman, where were you born and raised?

8 A In Israel.

9 Q And were you also educated in Israel?

10 A Yes.

11 Q And what was the highest level of education that you
12 attained?

13 A I was in the Academy Air Force. I studied as an
14 engineering regarding the air force to help in the missiles.

15 Q And are you now a United States citizen?

16 A Yes.

17 Q And when did you come to the United States?

18 A Late 70.

19 Q And why did you come to the United States?

20 A I liked this country. I saw some opportunities and I
21 decide to take a chance.

22 Q And what business are you in today?

23 A I'm in a jewelry business.

24 Q Okay. And with what company?

25 A OTC International.

1 Q And what's your position at the company?

2 A President.

3 Q And how long have you been president?

4 A Since we -- day one.

5 Q And do you mean that you formed the company?

6 A Yes.

7 Q And with whom did you form the company, if anyone?

8 A With my brother.

9 Q And when was that?

10 A Late 70.

11 Q How did you get into the jewelry business?

12 A I was in Israel at this time and I had a business, very
13 successful business there for coins, commemorative coins,
14 what was collected all around the world by collectors. And
15 some of the customers was here in the United States. So I
16 used to travel a lot around between -- mainly between Europe
17 and the States with this business.

18 One day in the winter, I was supposed to meet somebody
19 and he make a point of meeting at 47th Street, what is the
20 district, the jewelry district, one of places there, that he
21 was friendly with the owner of the place, and he told me to
22 wait there till he would arrive, because it was cold
23 outside. And I wait.

24 And then I have a discussion with the owner of the
25 place and during the discussion he asked me if I know

1 anything about jewelry from Israel and I told him that I
2 have not too much knowledge about Israel, but I know one of
3 my customers from Germany is a very -- very well involved
4 with jewelry in Europe and I can ask him. Maybe he can help
5 because I know that he was buying a lot of product in Italy.

6 So after this meeting, I just give him a call and ask
7 him if he can make me some connection and this was in the
8 winter. Sometime in the summer, during another traveling
9 time, I found that I have a package in the U.S. Custom. I
10 have no idea. I went over and it was jewelry, samples of
11 jewelry. So when I look at this, I realize that this is
12 something what connected with this telephone. So with this
13 package this package and I went to the same guy on 47. I
14 show him the merchandise and he was very excited, extremely.

15 And I realized that the way how he responded, it's
16 maybe very good quality. So I took the merchandise and I
17 tried to search and to learn a little bit. I give another
18 call to my friend in Germany. Then he told me that he can
19 set up an appointment for me in Italy to go and to look.
20 And I make a time to be in Italy, because it was just before
21 the vacation time.

22 But in July there is a jewelry show in New York at the
23 Sheraton at this time, Sheraton at that date. So I went to
24 see the jewelry show and in one of the places, at one of the
25 Italian exhibits, I saw some interesting merchandise. So I

1 start to talk to the guy, the Italian guy. And as we're
2 talking, he said to me, hold on one second. He went to the
3 corner, he opened his attache case and he took a notebook
4 and he said, are you Mr. Sheinman? I say, yes. He said,
5 oh, my friend from Germany called me and he gave me your
6 name and he say, if I can locate you in the States, because
7 you are interesting for jewelry and these. And I didn't put
8 too much attention to it, but here we are.

9 Q And is that how you got in the jewelry business?

10 A That's how I start just to introduce myself. So we
11 become friends. We went to dinner. And then he invite me
12 immediately to Italy and it was just before the vacation.
13 And I went to Italy and I met the guy and he start to show
14 me a little bit about jewelry, explain to me. And I pay for
15 merchandise and that's how I really start. That's my first
16 connection to the jewelry. Then I came back and I start to
17 show the merchandise to other people. Everybody show very
18 much interest. I didn't have any place.

19 I took a space in the bank, a safe deposit. And from
20 one safe deposit it become like 10, 12. It was starting to
21 be an operation in the bank. And people come down to the
22 safe deposit to get merchandise. I handled some business
23 through the bank. The guy that was in charge of the safe
24 helped me a little bit and he was nice to me. But one day
25 he was not there and this probably took like three, four

1 months and I realized that I have to move out from there
2 because it's getting bigger.

3 So I already arrange another place, a rented space.
4 But I remember the day. One day he was not there. He was
5 sick or something and someone come down to the area and
6 started, who's Mr. Sheinman, who is Mr. Sheinman? What
7 happened is somebody called to the bank to look for me, but
8 they usually called direct to the guy. He was not there, so
9 the phone started to circle around and the manager of the
10 bank -- what you doing here? I said, I'm sorry. I'm in a
11 business. And so he gave me -- we argued a little bit and
12 he gave me ten days to finish my business in the bank. And
13 then I move and I start my company.

14 MR. STEINFELD: Your Honor.

15 THE COURT: What?

16 MR. STEINFELD: I mean I find this very
17 interesting, but I just wonder how relevant the early
18 history of OTC is. And we have a lot of witnesses here
19 today and I just wondered if we can't -- I could stipulate
20 that he started out as a small business.

21 THE COURT: No, I understand. I think Mr.
22 Schachter is getting to the next phase.

23 MR. SCHACHTER: I was.

24 THE COURT: This was just background.

25 MR. STEINFELD: Okay.

1 BY MR. SCHACHTER:

2 Q What types of products does OTC sell today?

3 A We are involved with fine jewelry, what is gold,
4 diamond, silver, cameos, and even watches a little bit.

5 Q And is that the same as your business back in 2000?

6 A Not really. I think the diamond came stronger after
7 2000.

8 Q Now you use the term fine jewelry. Have you heard the
9 term branded fine jewelry?

10 A Yes.

11 Q And what do you understand branded fine jewelry to be?

12 A Branded is merchandise what created by either a
13 specific person or under a name and they sell under this
14 either slogan or name or person's name that they give to the
15 merchandise. It's more a cover as unique.

16 Q In 2000, the year 2000, did OTC sell branded fine
17 jewelry?

18 A No.

19 Q Now you mentioned -- and since 2000 is the relevant
20 period, we'll discuss that time instead of the present. In
21 2000 what were your general duties and responsibilities at
22 the company?

23 A I was the president of the company.

24 Q Okay. But as the president, what did you generally do
25 on a daily basis?

1 A Basically I was in charge of all the operation, but I
2 focused more about developing business, the sales
3 organization and people.

4 THE COURT: And what was the last thing, people?

5 A People, you know, relationship with the people.

6 Q And where was OTC located in 2000?

7 A In Long Island City, New York.

8 Q And did OTC employ sales people in 2000?

9 A Yes.

10 Q And were the sales people assigned different accounts?

11 A Yes.

12 Q And was Montgomery Ward one of OTC's customers in 2000?

13 A Yes.

14 Q And was there a salesman who was in charge of that
15 account in 2000?

16 A Yes.

17 Q And who was that salesman?

18 A Michael Sheinman.

19 Q And what is Michael Sheinman's relationship to you?

20 A He's my nephew.

21 Q And is that your brother's son?

22 A Yes.

23 Q And how long -- withdrawn. You had mentioned in your
24 earlier testimony that you attended a trade show at the very
25 beginning, a jewelry trade show in New York.

1 A Yes.

2 Q In the year 2000 did you continue to attend trade
3 shows?

4 A Yes.

5 Q And had you done that throughout the history of your
6 being in the jewelry business?

7 A Yes.

8 Q And are there within this country major jewelry trade
9 shows?

10 A Yes.

11 Q And what are the major jewelry trade shows?

12 A The major one is in June at Las Vegas. Then it was in
13 Orlando in the winter. And there's also a small one in New
14 York at the Javits Center.

15 Q And in the year 2000 did you attend the large one in
16 Vegas in June?

17 A Yes.

18 Q Now when you are at these trade shows do you walk
19 around?

20 A Yes.

21 Q And what happens? Do people have booths? Do they have
22 little offices? How is it set up?

23 A It's set up that all the exhibitors getting space based
24 on the equation what the place can give, you know? And each
25 one has his own space what could be between 10 feet, 20

1 feet, square feet. It's 10 by 10 or 20 by 10, whatever it
2 is the size. And he exhibits his merchandise there and the
3 buyers, whoever clients are coming and either looking at the
4 merchandise or purchasing, whatever it is.

5 Q Now do you know like in the year 2000, for example, do
6 you know how many people were exhibiting at the Vegas trade
7 show?

8 A I think it's thousands.

9 Q And do you know, have any idea how many of them were
10 selling jewelry products similar to what OTC offers?

11 A Many, many.

12 Q Would it be hundreds?

13 A Some of the merchandise maybe hundreds of people
14 selling the same. Some of the merchandise maybe less.
15 Usually we're trying to if you find something or discover
16 some new merchandise, you're trying to keep it a little bit
17 unique. But this industry, when something is good and is
18 generic and it's not anything. In short time it could be all
19 over.

20 Q Now you said in 2000 Montgomery Ward was one of your
21 customers. How long had it been a customer of your company?

22 A I would say since I think middle 80, between middle and
23 late 80.

24 Q In the year 2000 how would you rank Montgomery Ward if
25 you were to list your customers? Were they in the top 10 or

1 in the top 5 or in the lower 10?

2 A I would say in the middle of the top 10. I don't know
3 if they were 4, 5 or 6, but in the middle of the top 10.

4 Q At any time during the entire time Montgomery Ward was
5 a customer of OTC did you ever believe that you were more
6 important to them than they were to you?

7 MR. STEINFELD: Objection, leading.

8 THE COURT: Sustained.

9 THE WITNESS: Can I answer?

10 THE COURT: No.

11 MR. SCHACHTER: No.

12 THE COURT: The next question.

13 BY MR. SCHACHTER:

14 Q In the jewelry show at 2000 did you personally meet
15 with anyone from Montgomery Ward? In Vegas I'm talking
16 about.

17 A I think yes.

18 Q And who do you recall meeting with?

19 A It was a Roger Goddu and I'm not sure if he came -- I
20 think he came with a Lou Copuali (phonetic) and the buyers
21 also, but the buyers came probably separate.

22 Q And what role in --

23 THE COURT: I'm sorry. The name of the second
24 person?

25 THE WITNESS: Lou Copuali.

1 BY MR. SCHACHTER:

2 Q When you attended the jewelry show in June of 2000 in
3 Las Vegas what was your role? What did you do at the
4 jewelry show?

5 A Usually you prepare and you put all the jewelry to be
6 exposed and when the buyers are coming or whether we have an
7 appointment with them regarding to see the merchandise, to
8 sit and to go over the merchandise and to either to select
9 or to work on the programs, on the future programs. Jewelry
10 show is to show and taking all the business, starting the
11 purchasing for the business for the fall, Christmas, and
12 even you're going to the spring the year after that. In
13 this case, if it's 2000, spring 2001.

14 Q And you personally were at the jewelry show in Vegas in
15 2000, what did you generally do at the show?

16 A I attend to some meetings, but I'm basically there to
17 represent also the company to be there, because usually when
18 you're coming to a show, an important show like this, your
19 customers are also expecting to see the people, you know,
20 behind the company, the president, whoever it is. And these
21 are important issues to be there and deal at the place with
22 some customers. I was involved. Otherwise the salespeople
23 are dealing with the customer.

24 Q So would it be fair to say the salespeople were doing
25 the presentations and you were there as showing that you're

1 the owner of the company?

2 A It's not that I'm showing, you know. They know me,
3 that I'm the owner, but I'm there to support, to help, if
4 there is any issue that is beyond just the regular business,
5 if it's speciality items, if it's an advertising issue, if
6 it's a supporting, if it's -- sometimes you need the
7 merchandise faster and we don't know if we can make it.
8 It's many issues what could be that I'm trying to support
9 and to be involved with it if they need me.

10 Q Now you mentioned that you met Bob Goddu. Had you ever
11 met Mr. Goddu before that?

12 MR. STEINFELD: Roger Goddu.

13 Q Roger Goddu, I'm sorry. Roger Goddu.

14 A Yeah, I met him before in another show I think, another
15 Vegas show.

16 Q And in that Vegas show, at least the one in 2000, did
17 you have an appointment to meet with him or did he just show
18 up?

19 A No, we didn't have appointment. Usually this kind of a
20 meeting or whatever you call this, is more courtesy. When
21 he's coming he's coming to show that Montgomery is inside
22 and to talk, to show the vendors that they're behind
23 jewelry, to support the jewelry, but he's not -- he's
24 talking a little bit about the business, how good it is, how
25 we want to make it bigger and how the future is good. At

1 this point, I remember that he mentioned that they're
2 opening new stores and they're doing special things to make
3 the business better and going.

4 Q Do you recall sitting here today what you and Mr. Goddu
5 actually said to each other back in that Vegas show in 2000?

6 A No.

7 Q Do you remember in sum and substance, which means
8 generally what you said to each other?

9 A It's just -- it's for courtesy and it's very short
10 also. He didn't come to a meeting. I would say that
11 probably he was in the booths no more than 5, 10 minutes
12 probably.

13 Q Now during the year 2000 do you recall receiving any
14 letters from him?

15 A Yeah, we used to receive like a newsletter,
16 confidential, that how the situation in Montgomery, all the
17 improvement, all the future what they're looking for and a
18 little bit financial information.

19 Q And when you would read -- did you receive more than
20 one letter during 2000 from him?

21 A Yes.

22 Q And when you would read the letters, what was your
23 opinion of what he was trying to convey to you?

24 A Basically indicate that Montgomery is doing better and
25 better and they are really on the way to get out from the

1 bankruptcy and we were very happy with that.

2 Q Now in front of you you have a book to your left. Do
3 you see that?

4 A Yes.

5 Q And I'd like you to flip to -- that's defendant's
6 exhibit 29. Do you see that's there? That's the one.

7 A Yes.

8 Q If you go to the tab that says 29 and you open it.

9 A To what, 29?

10 Q The other book. I'm sorry. The loose-leaf.

11 A This one?

12 Q The loose-leaf. I meant plaintiff's 29.

13 A Which one?

14 Q That one. I apologize.

15 THE COURT: And Mr. Sheinman.

16 THE WITNESS: Yes.

17 THE COURT: Why don't you move that microphone
18 away from you so that you don't bang it with the book as
19 you're flipping the pages.

20 THE WITNESS: Okay.

21 THE COURT: Just bend it back a little bit like
22 this, okay?

23 THE WITNESS: Thank you.

24 THE COURT: Okay.

25 BY MR. SCHACHTER:

1 Q Just flip to the tab that has 29, exhibit 29.

2 A Okay.

3 Q And could you read that to yourself and tell me when
4 you're finished?

5 MR. STEINFELD: Your Honor, may I request a
6 stipulation with counsel that this letter was never produced
7 or acknowledgement to this letter was never produced by the
8 defendant to us. We asked for copies of letters that they
9 had in their possession. Just so the record is clear, I
10 just want it stipulated, although we have this as one of our
11 exhibits, it was not a document that they ever had in their
12 possession and they gave to us. Is that okay?

13 MR. SCHACHTER: A stipulation that we didn't
14 produce it, yes.

15 MR. STEINFELD: And that when we asked for all of
16 the vendor letters and other types of correspondence, you
17 didn't have this letter at the time we asked for it.

18 MR. SCHACHTER: Yeah, I think the only one vendor
19 letter we had was December of 1999, which is -- I'll tell
20 you what it's --

21 MR. STEINFELD: Well, why don't we start with this
22 one and rather not argue, unless you're going to use that
23 one, because I just want it clear for the record.

24 THE COURT: A stipulation that P-29 was not
25 produced in response to discovery by OTC.

1 MR. STEINFELD: Our discovery by OTC, the
2 plaintiff's discovery.

3 THE COURT: It was not produced.

4 MR. STEINFELD: That's all I'm asking.

5 THE COURT: Right. Not produced by OTC in
6 response to plaintiff's --

7 MR. STEINFELD: If there are any other ones, we
8 can talk about them then.

9 THE COURT: All right.

10 BY MR. SCHACHTER:

11 Q Do you recall ever receiving this specific letter?

12 A I remember that I received, but to say that I remember
13 exactly this letter, I cannot say it.

14 Q Were these the types of letters that you would receive
15 from Mr. Goddu?

16 A Yes.

17 Q And I'd now like to ask you to turn in the same book to
18 plaintiff's exhibit 23.

19 MR. SCHACHTER: We can stipulate this time, Your
20 Honor, I'm sure, that this is one of the letters that
21 defendant did produce.

22 MR. STEINFELD: All right. Let me just see on
23 that. Unfortunately, Your Honor, we can't stipulate to that
24 because we have entire --

25 THE COURT: Well, we need to talk about it then.

1 All we need to say that this is the exhibit. You would ask
2 for a stipulation that P-29 hadn't been produced.

3 MR. STEINFELD: Right.

4 THE COURT: There's no reason to stipulate
5 anything. All right? We have an exhibit that the --

6 MR. STEINFELD: It depends on what his questioning
7 is then and I'll reserve my right to object, if necessary.

8 THE COURT: Right.

9 MR. STEINFELD: Okay. Thank you, Your Honor.

10 BY MR. SCHACHTER:

11 Q Why don't we stay with P-29 for a moment.

12 THE COURT: Back to P-29?

13 Q Yeah, go back to P-29.

14 A Okay.

15 Q Having read now P-29, what do you understand it to mean
16 to you?

17 A That the performance is very good and the sales are up,
18 the inventory down, and they are heading to the right
19 direction. They're getting more money in cash, additional
20 \$100 million, and they have availability for more money and
21 they cannot be better. It means it looks very good.

22 Q Did you ever receive any communication from Montgomery
23 Ward during the year 2000 in which they were claiming they
24 weren't doing well?

25 A No.

1 Q Besides these letters from Mr. Goddu that you would
2 periodically receive, did Montgomery Ward ever supply you
3 with their financial information?

4 A No.

5 Q Did anyone else ever supply you with their financial
6 information?

7 A No.

8 Q Did you ever attend any general vendor meetings with
9 other vendors of Montgomery Ward where they discussed their
10 finances?

11 A No.

12 Q Were you ever asked to sign a confidentiality agreement
13 so that you could obtain financial information from
14 Montgomery Ward?

15 A No.

16 Q Did you ever ask Montgomery Ward for financial
17 information at any time during the year 2000?

18 A No.

19 Q Did you have any information that you knew of which
20 made you believe that Montgomery Ward was in financial
21 trouble during the year 2000?

22 A No.

23 MR. STEINFELD: I believe that's a leading
24 question. Objection.

25 THE COURT: Overruled.

1 BY MR. SCHACHTER:

2 A No.

3 Q During the year 2000 did OTC have financing with banks?

4 A Yes.

5 Q And what type of financing did OTC have with banks in
6 the year 2000?

7 A It's receivable financing. When we ship the
8 merchandise, create the invoice, the bank finance out of the
9 invoice, anticipate money against this invoice.

10 Q And why did OTC have this type of financing in year
11 2000?

12 A Because it's the only way how we can support our
13 supplier because when we get an order from the customer we
14 need time for the production, the manufacturing of the
15 merchandise, and then we need time to get the merchandise,
16 to take the merchandise bag, a preparation for shipping.
17 And all this could be up to a month and sometimes more. It
18 depends what type of merchandise it is. And by this time,
19 before we're shipping, we already need to pay the supplier.

20 Q During the year 2000 what type of customers did OTC
21 sell its jewelry to?

22 A We almost sell across the board. We sold mainly
23 department store, electronic.

24 Q I didn't hear. I'm sorry.

25 A Electronic channels. That means QVC, Home Shopping,

1 Shop NBC, department stores, chain stores and even
2 individual stores.

3 Q In 2000 what were OTC's typical credit terms with its
4 customers?

5 A It was, I would say, 30, 60 -- 30 days, 60 days, 90
6 days. That's it basically.

7 Q During the year 2000, and I'm excluding Montgomery
8 Ward, so don't tell me anything about Montgomery Ward. But
9 during the year 2000, did OTC have 30 days terms with any of
10 its other customers?

11 A Yes.

12 Q And who were some of the customers -- did it have those
13 type of terms with any of its larger customers?

14 A Yes.

15 Q And which of its larger customers do you recall that
16 OTC had 30 day terms with in 2000?

17 A Home Shopping -- no Home Shopping. Shop NBC was a
18 large customer. It was 30 days. Kohls was 30 days. And I
19 think Home Shopping also. That's what I recall now.

20 Q I'd like you to turn if you would to defendant's
21 exhibit 21.

22 THE COURT: Now we're in the -- we're not in the
23 loose-leaf?

24 MR. SCHACHTER: No, we're in the bound book, Your
25 Honor.

1 THE COURT: Mr. Sheinman.

2 MR. SCHACHTER: Mr. Sheinman, I'm sorry. We're in
3 the bound book.

4 THE COURT: Change books.

5 MR. SCHACHTER: Switch books for a minute.

6 MR. STEINFELD: Your Honor, if I can interpose an
7 objection at this point in time. I'm not understanding
8 where we're going with this line of questioning. It sounds
9 more like we're getting into industry evidence, which was
10 already presented to the Court and would be cumulative.

11 THE COURT: Unfortunately there's going to be some
12 overlap and I know it's going to happen on your case, as
13 well.

14 MR. STEINFELD: I agree, Your Honor. I just
15 wanted you to be aware that that's my concern.

16 THE COURT: All right.

17 MR. SCHACHTER: I'm certainly going to do my best
18 not to try to retry what we've already tried.

19 THE COURT: I forget when we started the industry
20 trial who was in favor of talking about change of terms at
21 that time and who said it was more appropriate in the
22 subjective test.

23 MR. SCHACHTER: Well, I've been told that the
24 plaintiff was more in favor, yes.

25 THE COURT: And the defendants wanted to bring it

1 up here.

2 MR. SCHACHTER: Yes.

3 THE COURT: And so it's difficult to figure out.

4 I think it applies really in both cases.

5 MR. STEINFELD: Well, I would agree with that,
6 Your Honor.

7 THE COURT: Yes. Okay. All right. We're looking
8 at D-21. Mr. Schachter.

9 BY MR. SCHACHTER:

10 Q Mr. Sheinman, does that independently refresh your
11 recollection as to any other customers of yours in which you
12 had 30 day terms with in 2000?

13 A Yes, I see also a Fingerhut, a corporation called what
14 I said, a Shop at Home, and Shop NBC.

15 Q Jumping back for a moment to that Vegas show in 2000
16 that you attended, did Montgomery Ward place any orders for
17 jewelry at that show?

18 A No.

19 Q And at that show was there any particular OTC employee
20 who worked with the Montgomery Ward buyer?

21 A Yes.

22 Q And who was that?

23 A Michael Sheinman.

24 Q Besides meeting customers at jewelry shows, were there
25 other times that you personally would meet with customers?

1 A Yes.

2 Q And did you, besides meeting with Wards at jewelry
3 shows, did you ever meet with them outside of the jewelry
4 shows?

5 A Yes.

6 Q And where would those -- and during the year 2000 did
7 you also meet with Wards besides at jewelry show?

8 A Yes.

9 Q And where -- and did you ever meet with them after the
10 June jewelry show did you ever meet with Wards?

11 A Yes.

12 Q And where did that meeting take place?

13 A At Montgomery Ward's headquarters in Chicago.

14 Q And had you ever met with them prior to that meeting at
15 their headquarters?

16 A Yes.

17 Q And how often would you in a year typically go to
18 Montgomery Ward's offices to meet with them?

19 A Probably twice a year, I would say.

20 Q Now in your business is there any particular season
21 that's more important than others?

22 A Yes.

23 Q And what season is the most important to you?

24 A The most important is Christmas.

25 Q And when you say Christmas season, what period of time

1 are you referring to?

2 A The season starts -- it depends which customer, but I
3 would say that around September when they're asking for
4 merchandise, sometimes even earlier.

5 Q I'm now jumping back to the meeting that you attended
6 at Montgomery Ward's offices after the June Vegas show. Do
7 you recall when that meeting was?

8 A In the June Vegas show?

9 Q No, after the June Vegas show you said you went to a
10 meeting at Montgomery Ward's offices.

11 A Yes.

12 Q So I'm asking you: do you recall when that was?

13 A Yes.

14 Q When was that?

15 A It was late July.

16 Q And did --

17 A Maybe early August.

18 Q I'm sorry.

19 A No, I say late July. It could be early August, but
20 around this period.

21 Q Besides yourself, did anyone else from OTC go to
22 Montgomery Ward's offices for that meeting?

23 A Besides me?

24 Q Yes.

25 A Yeah, Michael Sheinman.

1 Q And what was your and Michael Sheinman's purpose in
2 visiting Montgomery Ward's offices at that time?

3 A Basically it was an important meeting because after the
4 Vegas show they see their business during this year show
5 very good response and they was very excited with the silver
6 business, the growing silver business for them. So during
7 the Vegas show, Michael talked with their buyers and whoever
8 came to the show and they looked through the merchandise and
9 they decide that we'll have a meeting shortly after, as
10 close to the Vegas show as much as we can, to prepare all
11 the merchandise for the fall, Christmas and 2001, spring,
12 2001.

13 Q Before you went to that meeting did you and your nephew
14 have any discussion concerning Ward's finances?

15 A No.

16 Q Did you and your nephew have any discussion regarding
17 credit terms for Wards?

18 A No.

19 Q In your mind did you plan on discussing credit terms
20 with Wards before you went to the meeting?

21 MR. STEINFELD: Objection. That's definitely a
22 leading question as far as asking what his mind was. He can
23 ask him what he thought, whether he had any thought.

24 THE COURT: But he has to ask him what he thought
25 about a particular subject. He can't just say, well, what

1 were you thinking about on July 27th, 2000.

2 MR. STEINFELD: Well, he already testified he
3 didn't have any discussions. Now he's asking for his
4 thought process?

5 THE COURT: Right. I'm going to overrule the
6 objection. The question was, Mr. Sheinman, when you were on
7 your way to the meeting with Montgomery Ward did you think
8 about the credit terms between OTC and Montgomery Ward?

9 THE WITNESS: No.

10 BY MR. SCHACHTER:

11 Q Throughout the entire time --

12 THE COURT: Actually the question was did you plan
13 on discussing that?

14 MR. SCHACHTER: Yes.

15 BY MR. SCHACHTER:

16 Q Did you plan on discussing it?

17 A No.

18 Q During the entire time that Montgomery Ward was a
19 customer of OTC's do you recall a single instance in which
20 OTC refused to accept a Montgomery Ward order?

21 A No.

22 Q Can you recall a single time where OTC refused to send
23 a shipment to Montgomery Ward?

24 A No.

25 Q When you first arrived at the meeting, and again I'm

1 talking about the meeting in either late July or early
2 August of 2000 at Montgomery Ward's offices, when you first
3 entered the meeting do you recall who from Montgomery Ward
4 was there?

5 A It was a buyer, Rita, Rita Hamilton.

6 THE COURT: Rita Hamilton?

7 THE WITNESS: Yeah. Rita Hamilton.

8 BY MR. SCHACHTER:

9 A Her assistant, I think one or two planners and
10 advertising person, a lady for the advertising.

11 Q Did you and Michael bring anything with you to that
12 meeting?

13 A Yes.

14 Q And what did you bring with you?

15 A We brought the merchandise, what was supposed to take
16 place and to present what Michael worked on part of this
17 with a buyer at the Vegas show, some additional merchandise,
18 mainly it was silver merchandise and also a little bit of
19 gold.

20 Q To your company in your internal costs is there a
21 difference to you as to -- excuse me. Is there a difference
22 to OTC in costs to itself if it's selling gold as opposed to
23 silver?

24 A There is a difference. The first is a difference of
25 the price.

1 Q No, I'm talking about besides the price.

2 A The silver, the nature of the silver is that you're
3 dealing with a relatively sometimes small items, what is a
4 very low cost, very intensive labor and sometimes there's a
5 lot of units. I mean sometimes there is. Mainly it's more
6 units than you sell in gold.

7 Q And how does the fact that it's more units than gold --
8 does that affect the cost to OTC?

9 A If you have more units you need more population. If
10 you need more population, you need more help and that's part
11 of it, yes.

12 Q Now during the meeting, again we're sticking with this
13 meeting in July, August of 2000, when you were presenting
14 the jewelry, for what sales periods were you showing Wards
15 jewelry for? For delivery when?

16 A In this meeting?

17 Q Yes.

18 A Usually it's starting September. If you're dealing in
19 July, they would like to have merchandise sometimes the
20 earliest as you can. It depends on how the structure is
21 between the buyer and the salesperson. Because if they want
22 to do something in August, and it's available, then it's
23 August. But usually this take place for the fall, Christmas
24 and all the product for spring, Valentine Day and Mother's
25 Day.

1 Q When you say spring, Valentine Day and Mother's Day, do
2 you mean of the following year?

3 A Yes.

4 Q So that at the meeting you're having in July you're
5 already discussing purchasing for the following year?

6 A Yes.

7 Q And why do you discuss purchasing for the following
8 year in July and August?

9 A Because everybody wants to be prepared. It means they
10 want -- we need to know what they're looking for. Usually
11 during the season it's more difficult to work on the spring
12 because sometimes around September, October, November,
13 everybody is busy, including the manufacturer to finish the
14 product for the Christmas. So basically they're starting to
15 produce the merchandise for the spring sometimes around
16 December, January, because you have to -- in January you
17 have to ship the Valentine Day already.

18 Q And when you attended this meeting in July or August of
19 2000 were you intending to also make deliveries to Ward in
20 January of 2001?

21 A Yes.

22 Q And were you intending to also make deliveries in
23 spring of 2001?

24 A Yes.

25 Q During the course of the meeting did anyone else from

1 Montgomery Ward join the meeting?

2 A Yes.

3 Q Who else joined the meeting?

4 A At some point -- I don't know. Sometimes in the middle
5 of the meeting a Bob Baird.

6 Q Had you ever met Bob Baird before?

7 A No.

8 Q Do you know how he came to join the meeting?

9 A Yes.

10 Q And how did he come to join the meeting?

11 A He was at this time in charge of the jewelry division
12 of Montgomery Ward. He was the top executive of that. And
13 I don't know -- I don't recall how he came. I think Rita
14 mentioned that's he interested to meet us because everybody
15 was excited with the silver business. And he showed up very
16 casual and we explained to him, Rita explained to him about,
17 a little bit about the merchandise because he has no -- he
18 didn't have a knowledge about jewelry so much. And
19 basically he was showing very much interest how we can take
20 this business and grow it and make it bigger and better.

21 Q And when he -- do you recall -- I know you don't recall
22 his -- you don't recall his exact words, do you?

23 A No.

24 Q So generally do you recall what in sum and substance he
25 said to you and you said to him at the meeting?

1 MR. STEINFELD: I believe it's already been
2 answered with regard to -- or with regard to what, I
3 suppose. It's open-ended.

4 THE COURT: Overruled.

5 BY MR. SCHACHTER:

6 A As we're talking about that, he asked if we can do
7 something also to boost the season and to make more. And I
8 said to him that it's a little bit difficult because of the
9 time and the pressure, because we're already planning for a
10 big season as is for Montgomery Ward. And then we have an
11 open conversation, it was very casual, and he came with the
12 idea.

13 He said, look, if we change the terms, it can help?
14 And I look at him and I say, I think it definitely can help.
15 And he said I can change your terms and he asked what the
16 terms were and we told him it's 60 days. He said, what
17 about if we change this to 30 days and you participate 1
18 percent. It means I will charge you for that 1 percent.
19 And I said it's good because it can help our cash flow and
20 we can speed up probably more merchandise to put in the
21 pipeline to the manufacturer.

22 Q At the time that you were meeting in -- by the way, did
23 OTC also meet with its other large vendors prior to the
24 Christmas season -- excuse me, other large customers prior
25 to the Christmas season for 2000?

1 A No.

2 Q And did OTC, for example, meet with Kohls, did you plan
3 for the Christmas 2000 --

4 A Oh, I'm sorry. I missed that question. Can you say
5 that again?

6 Q For the year, the Christmas 2000 season, besides
7 Montgomery Ward, did OTC also meet with its other large
8 customers?

9 A Oh, yeah, sure.

10 Q And was it for the same purpose that you would meet
11 with Montgomery Ward, to plan the sales?

12 A Yes, yes.

13 Q And at the time you were meeting with Montgomery Ward
14 had you already or were you planning to have similar
15 meetings with your other vendors -- other suppliers -- other
16 customers? I'll start again.

17 A Okay.

18 Q At the jewelry show in Vegas, had you met with your
19 other large customers?

20 A Yes.

21 Q And did you get a sense from your other large customers
22 what they were planning to do for the Christmas of 2000?

23 A Yes.

24 Q And would you use that information to plan what you
25 would need as a company to meet your customers' needs?

1 A Yes.

2 Q Do you know what the word negotiation means?

3 A Yes.

4 Q Was there any negotiation over the 30 day terms between
5 OTC and Wards?

6 A No.

7 Q Was there any discussion or offer to give OTC 30 day
8 terms that wasn't connected to an increase in business?

9 A No.

10 Q Did you know what the terms were that Wards was buying
11 from its other customers?

12 A Say that again.

13 Q Did you know what terms your other customers were
14 selling to Wards on?

15 A No.

16 Q Did you ever discuss with any other customers what
17 terms they had?

18 MR. STEINFELD: Objection. How could their
19 customers sell to Wards?

20 BY MR. SCHACHTER:

21 Q I mean the other vendors --

22 THE COURT: Let's start over again. Hold on, hold
23 on, hold on.

24 MR. SCHACHTER: I withdraw the question.

25 MR. STEINFELD: Okay.

1 THE COURT: Start over again. You're talking
2 about competitors.

3 BY MR. SCHACHTER:

4 Q Your competitors, did you know what terms your
5 competitors sold to Wards on?

6 A No.

7 Q Did you ever discuss with any of your competitors the
8 terms they sold to Wards on?

9 A No.

10 Q Did anyone ever tell you what your competitors' terms
11 with Wards were?

12 A No.

13 Q During this July August meeting did you ever say to
14 anyone, if you don't change terms we won't sell jewelry to
15 you?

16 A No.

17 Q Did you make any demands of Wards at all at that
18 meeting?

19 A No.

20 Q Did you ever demand that they make payments to you of
21 old money they may have owed you?

22 A No.

23 Q Was there any discussion of whether -- during that
24 meeting was there any discussion as of that moment in time
25 that Wards owed you money or didn't owe you money?

1 A No.

2 Q As a result of that meeting did OTC take any steps to
3 acquire inventory for sale to Wards? Withdrawn. Prior to
4 December of 2000 did OTC take any steps to acquire inventory
5 that it hoped to sell to Wards in 2001?

6 A Say that again please.

7 Q During the year between July 2000 and December of 2000,
8 when Wards filed, had OTC begun to get inventory that it
9 hoped to sell to Wards in the year 2001?

10 A Yes.

11 Q During the month of -- withdrawn. There came a time
12 that you learned that Wards filed for bankruptcy?

13 A Yes.

14 Q So now I want to use the time period from your July
15 meeting to the time that you found out that Wards had
16 actually filed. In that time period, to your knowledge, did
17 OTC ever demand a payment from Wards?

18 A No.

19 Q Did OTC ever refuse an order from Wards?

20 A No.

21 Q Did OTC ever refuse to ship merchandise to Wards?

22 A No.

23 Q Did OTC ever request that Wards give any additional
24 security?

25 A No.

1 Q Did you ever discuss with Wards credit insurance?

2 A No.

3 Q Did you ever seek to get credit insurance for your
4 sales to Wards?

5 A No.

6 Q At the time that Wards filed its bankruptcy, do you
7 know approximately how much inventory OTC was holding which
8 it had hoped to sell to Wards in 2001?

9 A I would say at least half a million dollars.

10 Q And what happened to that merchandise?

11 A We tried to liquidate this after we know that they went
12 into bankruptcy. And some of the merchandise we still have
13 now.

14 Q Well, why weren't you able to simply, if it's
15 unbranded fine jewelry, why couldn't you just sell it to
16 Kohls, for example?

17 A Because it was a specific program, what we did for
18 Montgomery. If it was an earring project or some necklaces
19 or some kind of program that they did some advertising
20 regarding to it. Some of them we were able to liquidate,
21 maybe by the cost, even if we took a little bit loss or it
22 could be a small profit. But a big part of it we still
23 carry now.

24 Q In September of 2000 had you learned that Montgomery
25 Wards was in financial difficulty, would you have allowed

1 the company to ship them on 30 day terms?

2 A No.

3 Q If in this Christmas season shipping period of 2000, at
4 any time during that period had you learned that Wards was
5 in financial difficulty, would you have allowed your company
6 to continue to ship to them on 30 day terms?

7 A No.

8 Q Do you know how Wards would pay OTC for the jewelry you
9 delivered to it?

10 A I'm assuming by checks.

11 Q Were you involved in that?

12 A No.

13 Q During the year 2000 did you ever become involved in
14 it?

15 A Not that I know.

16 Q As president of the company during the year 2000 did
17 you ever discuss with anyone else payments that Wards had to
18 make to OTC?

19 A Yeah, I remember that after the meeting, you know, I
20 just came to Lee Rothline (phonetic) and I told him about
21 the change of the terms based on what Bob Baird indicated to
22 us and I let him know that the terms is changed and we give
23 1 percent discount and we'll get this in 30 days to help a
24 little bit the cash flow.

25 Q Did you ever have any discussions during 2000 with your

1 bank concerning Wards?

2 A No.

3 Q Do you know did anyone at OTC ever tell you that they
4 had discussions with your bank about Wards?

5 A No.

6 Q Did you ever instruct anyone at your company to do
7 anything to try to collect money from Wards in the year
8 2000?

9 A No.

10 Q Do you know of any efforts that OTC made to collect
11 money from Wards during 2000 other than the ordinary
12 payments that came in?

13 A No.

14 Q Do you know whether or not Wards actually increased its
15 business with OTC for Christmas 2000?

16 A I don't know, but maybe it is, but I don't know.

17 Q During the Christmas season of 2000 did you consider
18 Wards to be an important customer of your companies?

19 A Yes.

20 MR. SCHACHTER: One second, Your Honor.

21 BY MR. SCHACHTER:

22 Q At any time that you did business with Montgomery Ward
23 did you ever recall OTC having a credit limit with
24 Montgomery Ward?

25 A No.

1 Q Do you recall at any time in the year 2000 while you
2 did business with Montgomery Ward asking Montgomery Ward for
3 a payment because they had reached some type of credit
4 limit?

5 A No.

6 MR. SCHACHTER: I have no further questions.

7 MR. STEINFELD: Your Honor, my cross will probably
8 take a little while, not as long as direct, I'm sure. But
9 I'd like to take a break if that's okay and give the witness
10 a break.

11 THE COURT: All right. Ten minutes?

12 MR. STEINFELD: Yes, that's fine.

13 THE COURT: It's about 11:27 by my watch. I can't
14 see the clock in the back. Come back about 11:40.

15 MR. STEINFELD: Okay.

16 (Court stands in recess)

17 (Court resumes in session)

18 THE CLERK: All rise.

19 THE COURT: Thank you. Please be seated. Mr.
20 Sheinman. Mr. Steinfeld.

21 MR. STEINFELD: Thank you, Your Honor.

22 CROSS EXAMINATION BY MR. STEINFELD:

23 Q Good morning, Mr. Sheinman. How are you?

24 A Good morning. Thank you.

25 Q As you know, I'm counsel for the plaintiff and I've got

1 a few questions to ask you. I'd like to start with your
2 statement concerning unsold product that you had inventoried
3 for Wards but didn't deliver to Wards. Do you remember that
4 part of your testimony?

5 A Yes.

6 Q Okay. Now first of all, why didn't you deliver that
7 product in December, if you know, of 2000?

8 A When the delivery took place is based on the purchase
9 from the buyer. We are not allowed to deliver on our own
10 because we have the merchandise there.

11 Q So is it your testimony that Wards didn't actually
12 issue purchase orders for those particular goods?

13 A Yes.

14 Q Okay. Now you've said that -- and do you have any idea
15 why Wards in December didn't issue purchase orders for those
16 goods?

17 A No.

18 Q Did that surprise you at the time?

19 A No.

20 Q Why didn't it surprise you?

21 A Because they like to clean the inventory for the
22 Christmas and then in January they usually put the purchase
23 order for February, March and April.

24 Q So to the best of your understanding, this merchandise
25 was not part of the Christmas buy?

1 A Part of it was part of the Christmas buy because when
2 we have a program with them, we have to keep also on hand
3 merchandise to support the sales.

4 Q Well, were you surprised as president of the company
5 that in the end of November, which is when I assume the
6 latest they would have had to put an order for this product
7 in, that they didn't?

8 A No.

9 Q Even though it was for Christmas?

10 A It was not for Christmas. Whatever the purchase we
11 deliver. But usually the month of December is a very slow
12 month for ordering unless there is an emergency. The nature
13 of this industry, I think, December you don't make delivery.

14 Q So indeed what might have happened was that Wards
15 simply didn't order as much product in 2000 as you might
16 have anticipated that they would have. Is that what
17 happened, in other words?

18 A No, no. Can you ask you again?

19 Q I will repeat the question. I'll rephrase it. Isn't
20 it true, in fact, that Wards did not ramp up its purchases
21 in Christmas of 2000 versus the previous year?

22 A You make an assumption that I don't understand. The
23 way you ask it is like if 2000 in December they didn't make
24 a delivery, they didn't ask for merchandise?

25 Q All right. I'll try to rephrase the question.

1 A Okay.

2 Q I believe you testified that you thought or you were
3 told that Wards was interested in increasing its jewelry
4 business with you. Correct?

5 A Correct, yes.

6 Q However, in hindsight, do you agree that that did not
7 occur?

8 A We delivered everything what they ask for.

9 Q That's not the question I asked though. I asked did
10 they ask for less than you anticipated they would ask for?

11 A Not as I -- when it was -- I didn't see that, no. I
12 don't agree with that.

13 Q Were you in charge of tracking the shipments from
14 Wards?

15 A No.

16 Q So that you don't have actual knowledge, do you?
17 You're not testifying from actual knowledge as to the level
18 of shipments that Wards was requesting from your company.

19 A No.

20 Q And this, the half a million dollar figure, that's just
21 a guess on your part, isn't it?

22 A Yes.

23 Q And you have no documents that would support this half
24 a million dollar of unsold product, do you?

25 A It would be very difficult to document this now. It's

1 a rough estimate. It's an estimate that could be even
2 higher than this.

3 Q Okay. And when did you make this estimate? Did you
4 make it in the year 2000?

5 A No, I didn't make this in the year 2000. But as we did
6 the check later on in the years, the inventory, we realized
7 that a lot of the orders, a lot of the merchandise what's
8 supposed to go to Montgomery Ward at this time, we still
9 have in inventory. That's how I estimate this.

10 Q And as we sit here today, you have no idea how much of
11 that is still in inventory.

12 A Not really.

13 Q And you don't know whether you've recouped through
14 profitable sales of the remaining inventory enough to cover
15 the cost of the entire inventory.

16 A I know that we didn't.

17 Q How do you know that?

18 A Because when it comes to this issue, you're trying to
19 sell the inventory as quick as you can. And at this point
20 you're doing this for cost and less.

21 Q I think you testified in some cases cost and more.
22 There was some profit.

23 A It could be, but the majority I would say it's cost and
24 less. And whatever we have today, we're still willing to
25 sell this for less than cost.

1 Q Now did your company file a claim in the Montgomery
2 Ward bankruptcy, this bankruptcy?

3 A I don't know.

4 Q Who would know?

5 A The lawyer.

6 Q Excuse me?

7 A Our lawyer probably.

8 Q Your lawyer would know. Okay. Are you aware of
9 whether OTC was owed any money by Wards when it filed
10 bankruptcy?

11 A I believe so.

12 Q And how much do you believe they were owed?

13 A A small amount.

14 Q About \$16,000?

15 A I don't know if it's sixteen or less or more, but I
16 know it's a small amount.

17 Q Very small compared to the total sales.

18 A Compared to the total sale, yes.

19 Q And are you aware what your total sales to Wards was in
20 the year 2000?

21 A Not really.

22 Q Why not?

23 A Because it was not part of my job.

24 Q Is it a fair statement to say that the financial
25 workings of your company was not part of your job?

1 A Say that again.

2 Q The financial information from your company, financial
3 information, was that something that you, as president,
4 would be on a day to day basis dealing with?

5 A No.

6 Q Who would?

7 A Lee Rothline.

8 Q And when it comes to whether or not Wards was paying
9 its bills on time or not, was that something that you would
10 be aware of?

11 A No.

12 Q So any testimony that you've given here today
13 concerning that was merely a conjecture on your part?

14 A Can you ask the question again?

15 Q Yes. So any testimony you gave in response to Mr.
16 Schachter's questions was not based on your personal
17 knowledge with respect to how Wards paid its bills?

18 A Correct.

19 Q And any testimony you gave regarding any collection
20 efforts made by your firm to collect bills from Wards was
21 not based on your personal knowledge?

22 A Not direct personal knowledge, yes.

23 Q Do you have any indirect knowledge of how your company
24 would request payment from Wards?

25 A Not really.

1 Q Not really. Okay. I'd like you to look at plaintiff's
2 exhibit 52. Do you have that in front of you?

3 THE COURT: Now you have to go to the three ring
4 binder.

5 BY MR. STEINFELD:

6 Q Okay. Are you there, sir?

7 A Yes.

8 Q Okay. Have you ever seen this document before?

9 A Yes.

10 Q Okay. Well, can you describe it for me?

11 A It's Montgomery Ward and then there is a number of
12 invoices, an amount and total amount and then the address.

13 The address, yes, name, fax number and name from Joe Cleary,
14 OTC International.

15 Q Now is this a document that was produced by your
16 company?

17 A I don't know.

18 Q You don't know. Okay. Do you know who Joe Cleary is?

19 A Yes.

20 Q Who is he?

21 A He was a comptroller of the company.

22 Q And it says from Joe Cleary. Do you see that?

23 A Yes.

24 Q Okay. And do you see the date on the top? Not the
25 first date, but the date below it. Look at the top left.

1 A The date, yes.

2 Q And what is that date if you can read it?

3 A November 13, 2000.

4 Q Okay. And that appears to be the date of this original
5 document, doesn't it?

6 A I don't know if that's the date for the original
7 document.

8 Q Okay.

9 A But I see a date here.

10 Q All right. Do you know -- and then you see that it's
11 addressed to attention, Zelda Matthews, do you see that?

12 A Yes.

13 Q And a fax number in Chicago.

14 A I don't know if it's Chicago, but I see numbers.

15 Q All right. A 312 area code.

16 A Yes.

17 Q Okay. Do you know who Zelda Matthews is?

18 A I have no idea.

19 Q Okay. Do you know who -- do you recognize any of these
20 invoices as being invoices from your company to Montgomery
21 Ward?

22 A I don't know if it's from Joe Cleary -- but I don't
23 know.

24 Q Would Lee Rothline know, in your opinion?

25 MR. SCHACHTER: Objection.